

In re ) Fair Hearing No. 10,552  
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Appeal of )

The petitioner appeals the Department of Social Welfare's denial of her request for back rent through the ANFC Emergency Assistance program. An expedited hearing was held in this matter on June 4, 1991, five days after the initial denial, at which time the hearing officer reversed the Department's decision under special procedures in emergency hearings.

1. The petitioner has received ANFC on behalf of herself and her two young children since July 12, 1990, when her ex-husband left them. She receives \$630.00 in ANFC, \$50.00 through the child support pass through program, and \$163.00 in Food Stamps. During the winter she received some assistance with her fuel as well.

2. In October of 1990, the petitioner found a house to rent some distance out of her town for \$450.00 per month. This amount did not include utilities. The petitioner paid her rent for the first five months through February of 1991. The petitioner also put her name on a list for a Vermont State Housing Rental Subsidy and is now 18th on the list. It is expected that she will get a certificate in 9-12 months.

3. During the winter, the petitioner incurred an unexpected car repair bill of approximately \$700.00. Because her children are small and she lives some distance from town, she felt it was necessary to make this repair. She also incurred counseling fees and legal fees in connection with her divorce which she felt were necessary to pay in order to continue these services and to finalize the divorce. One of her children was also placed in a nursery school class at a cost of \$39.00 per month which the petitioner felt was important for that child's emotional well-being in the midst of the divorce. The total of all these expenses over the winter and spring came to about \$1,350.00.

4. In early March, the petitioner approached her landlady who lives in a house down the road and explained that she was having problems with paying the rent. The landlady was sympathetic and asked her to make it up as soon as she could. The petitioner, because of the above expenses, was unable to come up with the rent in April or May. On May 25, 1991, the landlady approached the petitioner and said she could wait no longer and that she had to have the rent money promised since March. The petitioner called the Department to see if she could get any help and told the worker that she thought an eviction action might be coming. An appointment was scheduled for her and she was told not to get anything in writing from the landlady until after the appointment was held.

5. On May 28, 1991, the petitioner went into the Department's district office to request assistance with paying the back due rent for March, April and the current month of May. This was the first time she had ever requested such assistance from the Department. The petitioner was asked what expenses she had incurred in the last month and she estimated the following:

\$	450.00	-	rent
	100.00	-	phone
	100.00	-	electric
	100.00	-	car payment
	31.00	-	car expenses
	75.00	-	gas for car
	5.00	-	propane gas
	10.00	-	legal fees payment
	35.00	-	counseling payment
	10.00	-	on an old bill
	25.00	-	garage repairs
	39.00	-	preschool
	150.00	-	food
	10.00	-	trash removal

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TOTAL        \$1,140.00 - per month

She was not questioned as to which of these bills might or might not continue for the future.

6. Based on the above information, the Department denied the petitioner's request for back rent giving two grounds: (1) the petitioner had not received a written notice of lease termination, and (2) payment of the back rent would not prevent but merely postpone eviction. The latter reason was based on the District Director's opinion that the petitioner had "mismanaged" her funds based upon her incurring expenses in excess of her monthly benefits. It was his opinion that even if the Department assisted her,

she would not be able to keep her rent current although he agreed that the rent itself was not unreasonable. He also admitted that the necessity or reasonableness of incurring and paying for these extra expenses was not discussed with the petitioner.

7. On the day of the expedited fair hearing, the petitioner produced a written demand for the rent and notice of termination from her landlady which included a promise to continue the tenancy if the back rent were paid. The Director agreed that the written notice was the one required by the Department's regulations. He still felt, nevertheless, that the second ground for denial--that the assistance would merely postpone and not prevent homelessness--still remained. He offered, however, to pay the back rent if the petitioner would agree to have her future rent vendored directly to her landlady.

8. The petitioner does not wish to agree to have her payments vendored because then she would only receive about \$200.00 in cash per month which she does not feel is sufficient if an emergency should arise. At this point, the petitioner's monthly expenses have decreased because she has paid off her counseling, preschool, legal and car repair bills. Now that she does not need to keep in touch with her legal representatives, she is planning to disconnect her telephone. She also expects that her electric bill will go down in the summer to about one-half of her winter payments. She expects her total monthly expenses for the foreseeable

future to be about \$900.00. She intends to resume her rent payments in June but says that she cannot promise she won't ask her landlady to wait again if an emergency expense should arise. She is hoping that she can hold on and "juggle" money until she gets her rent subsidy at which time she feels her financial distress will ease up some. The petitioner's testimony is found to be entirely credible and sincere.

ORDER

The Department's decision is reversed.

REASONS

Under the Department's ANFC Emergency Assistance program, rental arrearages can be paid for families whose situations meet the following criteria:

Rental (or Mortgage) Arrearage

Families with children who face loss of shelter due to non-payment of back rent (or mortgage), and have received a "notice of termination" under 9 VSA 4467 (a) (or "demand notice"), may be assisted with current rent (or mortgage) plus up to 2 months of back rent (or mortgage) providing all of the following criteria are met:

- a. the family meets all criteria for ANFC-EA eligibility, and
- b. the special state appropriation intended for this purpose has not been exhausted, and
- c. the landlord (or mortgage holder) agrees that, with this payment, any action intended to evict or otherwise cause this family to relocate will be terminated and will not be reinstituted on the basis of obligations remaining as of the date of payment, and
- d. there is a realistic probability that this assistance will actually prevent, rather than

simply postpone, homelessness.

Denials based on exhaustion of funding will not require prior warning of funding status or amendment to this policy.

Payments made under this sub-section shall be for the actual monthly rental (or mortgage) obligations, disregarding maximums and prior payment periods as established in section 2813.1, but within such fiscal limits that condition d. above is met.

It is not intended that payment of 2 months rental arrearage (or mortgage payments) shall discharge the applicant's responsibility for any additional arrearage which may have accrued nor shall it impinge on any other legal means of collection of such debt, short of actual eviction (or foreclosure) or a payment plan leading to eviction (or foreclosure) through crediting current payments to the arrearage rather than the current payment due.

W.A.M. § 2813.3

Initially, the Department's decision to deny the petitioner was based on her failure to receive the written "notice of termination" and the Department's belief that homelessness would not be prevented but only postponed by the help. Once she produced the eviction notice,<sup>1</sup> however, the only issue remaining in this matter is whether "there is a realistic probability that this assistance will actually prevent, rather than simply postpone, homelessness".

The Department has made a determination that payment of the back rent would postpone homelessness because the petitioner's reported past expenses exceeded her ANFC payment by some \$300.00 per month. The Department has apparently determined that this situation will inevitably lead to the petitioner's failure to pay her rent again in the near future.

The credible evidence presented at the hearing was that the petitioner's regular future expenses will be close to \$900.00 per month. The petitioner admits that she has to "juggle" to pay her bills but does not foresee getting so far behind on rent unless there is another emergency. Even though it can be found that even the \$900.00 expense she expects to incur each month is in excess of her \$843.00 worth of benefits, that fact alone is not sufficient to conclude that there is no realistic probability that homelessness cannot be prevented through this assistance. There was no claim made by the Department that the petitioner's rent was extravagant or that her other future expenses are unnecessary.

The use of the above standard is particularly troubling in that there are probably very few ANFC recipients who do not have expenses which exceed their benefits. The regulations, in fact, specifically limit payments to "66% of the ANFC assistance group's total basic needs requirements".

W.A.M. § 2245.24. This regulation recognizes that because of insufficient program funding, each recipient will have basic needs which cannot be fully paid for through ANFC payments. A policy of denying additional assistance to recipients solely because these acknowledged basic needs exceed their less-than-adequate grants at best makes no sense and at worst is cruelly cynical. Denials of additional assistance based on such a principle are simply not supported by the goals and regulations of the ANFC

program or the ANFC regulations on mismanagement.<sup>2</sup>

The Department surely could have denied this assistance to this individual if it had evidence that the petitioner was an irresponsible person who was unlikely to pay future rent regardless of her circumstances. However, the District Director admitted that he had not discussed with the petitioner the reasons she had failed to pay her rent for the previous three months. That being the case, the Department, in fact, had no evidence upon which to make a determination that the petitioner had or had not mismanaged her funds.

The petitioner did put forth evidence at the hearing, however, from which it could have been concluded that she did the best she could with her limited funds during a financially and emotionally difficult period for her. The evidence does show that she paid her rent for the first five months of her tenancy and stopped paying only when her car broke down and needed major repairs, and when she felt it was necessary to spend money finalizing her divorce and paying for counseling and preschool because she believed her family needed these services to get through the devastating emotional crisis of a family breakup. Although others may have chosen to pay the rent over legal and counseling fees in this situation, the petitioner's judgment that her expenditures were more important to her family's well-being must be given due respect. Her failure to pay her rent was clearly caused by an emergency (her car repairs), and



extraordinary events (her divorce) which she felt was of a higher priority. There is no evidence upon which to find that the petitioner squandered her money on frivolous or extravagant items so as to warrant a finding that she had mismanaged her funds in the past or would likely do so in the future. The Department's decision is, therefore, reversed.<sup>3</sup>

FOOTNOTES

<sup>1</sup>Unlike the General Assistance (GA) program, persons requesting EA do not need a Court eviction order to receive assistance.

<sup>2</sup>The Department has set out criteria for need of protective payment due to money mismanagement in its manual as follows:

Evaluation will be made by the District Director of complaints of financial mismanagement and of recipient's capacity to overcome problems in order to establish whether or not a protective payment plan is warranted. The services of Social and Rehabilitation Services may be requested in this evaluation particularly since it involves the welfare of children.

Financial mismanagement exists where the health and safety of the children are jeopardized by the inability of the caretaker relative to meet his basic financial obligations on a regular basis. Such obligations include, but are not limited to, the following:

- a. rent, tax or mortgage payments;
- b. utility or service payments, such as those which provide heat, water and electricity;
- c. the provision of adequate clothing.

It need not be shown by the Department that actual harm to the children has been suffered before protective payments may be authorized. A failure to keep sufficiently current on payment of bills such that the loss of the services provided is threatened will suffice. However, it shall be a defense available to

the caretaker relative that an emergency or an extraordinary event of high priority has occurred, which event was the cause of said failure to make regular payment. The Department shall also give due consideration to a claim by the caretaker relative that regular payment was not made because of a reasonable exercise of consumer rights arising from a legitimate dispute with the providers of the involved services, or because the expenses for necessary bills exceed the caretaker recipient's grant and other income.

A finding of financial mismanagement may not be based solely upon the fact that bills are not paid on a timely basis. For purposes of this section, a bill shall be paid on a timely basis if paid within ten (10) days of its due date. However, when either the provider issues a second bill for a new service (e.g., a bill for the delivery of a separate oil shipment), or when the bill for a second time period becomes due (e.g., the succeeding month's rent), the issue shall no longer be that of timely payment. Rather the issue shall be failure to keep sufficiently current with the payment of bills so as to avoid the threat of loss of said service.

A statement of the specific reasons that support the need for making protective payments must be placed in the case record.

When mental or physical limitations preclude capacity to improve management of funds, legal alternatives shall be pursued. There must be documentation of inadequate physical capability or mental incapacity for self-care and concern for family welfare. Petition for appointment of a legal guardian or legal representative for the recipient may be initiated.

W.A.M. § 2235.1

<sup>3</sup>The Department's decision was reversed under emergency hearing rules during the interim and the petitioner has already received the full back-rent award.

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